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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAND B. WILLIAMS,

Defendant and Appellant.

B201893

(Los Angeles County
Super. Ct. No. VA096896)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Roger Ito, Judge. Affirmed.

Briand B. Williams, in pro. per.; and William D. Farber, under appointment by the
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Briand B. Williams appeals from the judgment entered following his conviction after a jury trial, at which he represented himself, for making a false financial statement. No meritorious issues have been identified following a review of the record by Williams's appointed counsel and our own independent review of the record, including documents filed by Williams after we granted his motion to augment the record, and our analysis of the multiple contentions presented by Williams in a supplemental brief. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information and Pretrial Motions

An investigation into the fraudulent purchase of a new car led to the arrest of Williams. An information filed on September 20, 2006 charged Williams with grand theft of an automobile (Pen. Code, § 487, subd. (d)(1))¹ (count 1), commercial burglary (§ 459) (count 2) and making a false financial statement (§ 532a, subd. (1)) (count 3). The information also specially alleged Williams had served a prior prison terms for a felony (§ 667.5, subd. (b)).

Williams, appearing in propria persona, entered a plea of not guilty and denied the special allegation. His motion to set aside the information (§ 995) was heard and denied on December 1, 2006. His motion to suppress evidence (§ 1538.5) was heard and denied on June 19, 2007. Thereafter Williams filed numerous motions for compulsory discovery and to dismiss the case, all of which were denied.²

¹ Statutory references are to the Penal Code unless otherwise indicated.

² Among others, Williams filed motions “To Dismiss The Information Pursuant to Sections 1382(a)(1), 1384, and 1385(a) in Furtherance of Justice, For Violation of Speedy Trial Statutory Right(s), Unlawfull [sic] Detention After Statutory Time For Failure To Refile and for Violation of U.S. Fed. Const. Rights & Cal. Const. Due Process Rights, “To Set Aside Information And A Nonstatutory Motion To Dismiss Information,” “To Dismiss Information For Failure To Preserve Evidence For Lack Of Evidence And For Destruction Of Evidence,” “To Dismiss Information Due To The Prosecution’s Failure To Provide Defense With Full Discovery Before And During The Pretrial Proceedings Timely, Pursuant To CPC [sic] § 1054.5 (b) & (c) and Cal. Const. Art. I,

2. Trial, Verdict and Sentencing

Prior to the presentation of evidence, the trial court granted Williams's motion to bifurcate trial of the prior prison term allegation. Williams represented himself throughout the jury trial. At the close of the People's evidence on June 29, 2007, the court heard and granted Williams's motion for judgment of acquittal (§ 1118.1) as to the grand theft and burglary charges (counts 1 and 2), but denied it as to the charge of making a false financial statement (count 3).

Williams was convicted of making a false financial statement. The jury also found Williams used a fictitious business name in the commission of the offense. The prosecution declined to proceed on the prior-prison-term enhancement, and it was dismissed. After his oral motion for a new trial was denied, Williams was sentenced to 365 days in county jail. The trial court ordered Williams to pay a \$20 security fee and a \$200 restitution fine.

Prior to sentencing Williams filed several additional motions, all of which were heard and denied: a "'Confidential' Defense's Ex parte Notice Of Motion For Production Of Transcripts And 'Confidential' Points And Authorities And Declaration," a "Motion To Reduce Bail And For Release On Own Recognizance," a "Motion For Bail Pending Appeal," and a "Motion For Stay Of Execution Of Judgment Pending Appeal."

3. Summary of Evidence at Suppression Hearing

Williams moved to suppress financial documents reflecting his purchase of a new car found by police during a search of a car that had been loaned to Williams by the dealership following the purchase. At the outset of the hearing, the People stipulated that Williams had a privacy interest in the loaner car.

Los Angeles County Sheriff's Detective Robert Manning testified at the suppression hearing he had been told by a fraud investigator for the automobile manufacturer that Williams had provided false information on his credit application when

subds. [sic] §§ 28(d) & 30(a) & (c)," and "To Compel Authentication Of Prosecutorial Discovery And Evidence Pursuant to Evidence Code Sec. [sic] § 1401."

purchasing the new car. Specifically, Williams had stated a monthly income from a fictitious business and a mail box drop rather than an actual home address. Manning then learned Williams had an outstanding warrant issued in Ventura County for an alleged parole violation. On August 19, 2006 Manning went to the dealership to arrest Williams after being notified Williams was returning the loaner car.

When Detective Manning arrived at the dealership, an employee identified Williams, who was still holding the loaner keys in his hand. Manning arrested Williams on the outstanding warrant, searched the loaner car and recovered two sets of financial documents, one entitled “Billing Statement” and another entitled “Lexus Financial Services Billing Statement.” After the search was completed, the loaner car was returned to the Lexus dealership.

The trial court denied Williams’s motion to suppress.

4. Evidence Code Section 402 Hearing and Other Evidentiary Issues

On the day of trial the prosecutor gave Williams a list of potential witnesses, which included Daniel Merrill, who had not been named in the police reports or other documents previously provided to Williams. Williams objected, arguing the disclosure of Merrill was untimely, he had not been able to conduct an interview or to prepare his cross-examination of Merrill and, as a consequence, Merrill’s testimony should be excluded. The trial court agreed the disclosure was untimely. At an Evidence Code section 402 hearing, the prosecutor made an offer of proof that Merrill, a credit analyst for Lexus Financial Services, would testify he would not have approved Williams’s credit application had it not indicated his monthly income was \$8,000. After considering Williams’s arguments, the trial court ruled Williams could not demonstrate prejudice from the delayed disclosure. However, the court did arrange for Williams’s investigator to interview Merrill before he testified. The record shows Merrill was interviewed by Williams’s investigator and subjected to protracted cross-examination by Merrill.

Merrill’s testimony was preceded by the testimony of Tarek Fakhouri, the finance manager of Lexus of Cerritos. Fakhouri testified as a witness for the prosecution.

Williams had also subpoenaed Fakhouri and objected when the trial court excused Fakhouri so he could travel out-of-state on vacation during two days of trial. Williams argued he wanted Fakhouri available to impeach his testimony by cross-examining Merrill. The trial court explained Williams did not need Fakhouri in court to impeach him with Merrill's testimony and overruled Williams's objection. However, the court stated, if Williams needed to question Fakhouri further, he could make an offer of proof and the court would arrange for Fakhouri to return before the defense rested. After that exchange, Williams did not request that Fakhouri be recalled.

5. Summary of Trial Evidence

The primary issue at trial was whether Williams had made false statements on his credit application. The prosecution asserted Williams had falsely stated he had a monthly income of \$8,000, was a legal consultant, and was employed by WMS Esquire and Associates. Williams contended any misstatements had been created by employees of Lexus Financial Services and the Lexus of Cerritos dealership, who were misrepresenting (deliberately or by mistake) his creditworthiness to prevent him from keeping the car he had properly purchased.

As part of the People's cases, Ester Gutierrez testified in early April 2006 she was employed as the assistant manager of fleet sales at the Lexus of Cerritos dealership. After several conversations Williams agreed to buy a new Lexus IS350 sport edition, handed Gutierrez a \$500 deposit to reserve the car and said he intended to finance the balance of the purchase price through his credit union. In return, Gutierrez gave Williams a receipt for his deposit and a purchase order for the car that he could present to his credit union. Before Williams left, he provided Gutierrez certain information the dealership requires as a matter of policy from all prospective car purchasers. On a credit application Williams wrote his name, date of birth, driver's license number, social security number, home address, employment information and nearest relative and signed the form. As part of his employment information Williams indicated he had worked as a "legal consultant" for WMS Esquire and Associates for more than 16 years. Gutierrez

told Williams the information would be used to check his credit history. Some time later, Williams decided to secure financing through the dealership. In response to Gutierrez's inquiry, Williams told her in a telephone conversation his monthly income was \$8,000. Gutierrez added that information to Williams's credit application before forwarding it to Lexus Financial Services.

Based on Williams's credit application and financial information, on May 1, 2006 Lexus Financial Services agreed in writing to finance his purchase of a new Lexus IS350 sport edition, subject to verification of Williams's employment information. On June 6, 2006 Williams went to the Lexus of Cerritos dealership to pick up the car. He made a downpayment of \$2,200 as previously agreed and signed the installment sales contract to purchase the car. The total purchase price subject to financing was \$43,973.71. Williams formally took possession of the car by driving it around the block before leaving it at the dealership for some custom work to be completed. Days later Williams retrieved the car and later registered it in his own name.

In 2006 Tarek Fakhouri was finance manager for Lexus of Cerritos. He testified credit applications including income information were typically completed by the prospective purchaser. Lenders would not provide loans absent such salary information, subject to verification. In his experience dealership employees generally telephoned the prospective purchaser to obtain any necessary income information that had been omitted on the credit application. The employee then informed the bank or lender of the income information. However, it is the responsibility of the lender, not his department, to verify the income information obtained. On June 6, 2006 Williams's signed an installment contract with Lexus Financial Services requiring him to pay \$915 per month for 72 months.

Daniel Merrill testified in 2006 he was a credit analyst for Lexus Financial Services. He reviewed the credit applications and financial histories of customers seeking to finance the purchase of a new car from a dealership, such as Lexus of Cerritos. According to Merrill, Williams's loan was subsequently recalled for two reasons: First,

for nonpayment because Williams never made any car payments; and second, for false information because Williams had stated incorrect or fictitious employment information on his credit application

Detective Manning testified he had attempted to confirm the employment information on Williams's credit application. Manning telephoned WMS Esquire and Associates, listed on Williams's credit application as his employer. The telephone number provided by Williams was for an answering service, which had no information about WMS Esquire and Associates. Manning also investigated WMS Esquire and Associates using the internet, tax records, business licensing information and other sources without success. He was unable to find any information about Williams's stated employer.

Following his arrest, Williams told Detective Manning, as owner of WMS Esquire and Associates, he helped his clients complete legal documents at no charge although he is neither an attorney nor a paralegal. Williams also admitted he did not earn a monthly income of \$8,000. Instead, he was not employed and received monthly SSI payments. Williams also said he was homeless and his address was a mailbox drop. Williams admitted he had not made any car payments.

Williams did not testify in his own defense. William T. Moore, a licensed private investigator, testified as a defense witness that he had interviewed Merrill. Moore said Merrill told him an investigator for Lexus Financial Services had verified Williams's stated employment by telephone. Dorothy Birotte, Williams's aunt, testified Williams had been living with her for the past five years. Birotte did not know Williams's job, his income or if he was employed. She knew Williams worked for a limousine service at some point. Mark Birotte, Williams's cousin, testified and corroborated his mother's testimony.

DISCUSSION

We appointed counsel to represent Williams on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On August 5, 2008

we advised Williams he had 30 days within which to personally submit any contentions or issues he wished us to consider. We granted his motion to augment the record to include “Exhibits” (certain motions heard and denied in the trial court, as well as copies of the police reports and various subpoenas duces tecum) and received a supplemental brief in which Williams challenged his conviction and sentence on a number of grounds. Although none of Williams’s claims presents an arguable issue, pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, 110, 120-121, we identify Williams’s contentions and explain the reasons they fail.

1. Issues Related to the Prosecutor’s Performance

Williams complains of the People’s failure to timely produce its list of potential witnesses. In support, he cites *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215] (*Brady*), which requires the prosecution to disclose material exculpatory evidence to the defense. The only witness not timely disclosed to Williams was Daniel Merrill. As discussed, the trial court gave Williams time to interview Merrill before Williams cross-examined him at length. Williams was not prejudiced in any way by the delayed disclosure of this witness. Moreover, there is no suggestion Merrill’s testimony was in any way exculpatory to Williams. Any delay in identifying him as a witness does not implicate *Brady*.

Williams also contends the prosecutor “made improper and prejudicial opening statements” and “sandbagged” him, knowing Williams could not argue in rebuttal. We have reviewed the transcript of the opening and closing arguments to the jury and find no instances of prosecutorial misconduct.

2. Issues Related to the Trial Court’s Conduct

The bulk of Williams’s supplemental brief addresses what he perceived as bias and misconduct on the part of the trial court. Williams perfunctorily presents many of these claims—namely, the court improperly: (1) prevented him from continuing to argue motions once they were denied; (2) “tainted” the jury by stating at the outset of trial Williams had been charged with three counts although only one count survived his

motion to set aside the information; (3) sustained the prosecutor's objections and curtailed Williams's cross-examination of witnesses; (4) admitted testimony of Williams's arrest; (5) allowed jurors to be impaneled who lived "beyond the 20 mile radius limit"; (6) "rushed" trial proceedings; (7) denied his request for work schedules of various Lexus of Cerritos employees; (8) allowed Fakhouri to leave on vacation; instructed the jury with CALJIC No. 207³ (9) explained reasonable doubt; and (10) denied his post-judgment motions. Each of these contentions is entirely devoid of evidentiary or legal support and, in any event, is properly deemed abandoned in light of the lack of legal argument, citation to authority or reference to the record. (See *People v. Barnett* (1998) 17 Cal.4th 1044, 1107, fn. 37.)

A trial court has the "inherent ... discretion to control the proceedings to ensure the efficacious administration of justice." (*People v. Gonzalez* (2006) 38 Cal.4th 932, 951.) In this case the trial court went to great lengths to accommodate Williams's demands and to enable him to prepare and to present an adequate defense, while maintaining the orderly and effective administration of the proceedings. Williams's claims of judicial bias and misconduct are without merit.

We have examined the entire record, including the additional exhibits 1 through 10, and are satisfied Williams's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly, supra*, 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

³ Over Williams's objection the trial court instructed the jury, in accord with CALJIC No. 207, "It is alleged that the crime occurred on or about June 6, 2006. The People are not required to prove that the crime took place exactly on that day but only that it happened reasonably close to that day."

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.